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| 10/815,460      | 04/01/2004  | Jeffrey S. Dugan     | 038675/276255       | 6395             |

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EXAMINER

EDWARDS, NEWTON O

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1774

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/815,460

Applicant(s)

DUGAN, JEFFREY S.

Examiner

N Edwards

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 2-6, 8, 11 and 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 1-18 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 7, 8, 9, 10, 11, 12, and 13 drawn to a fiber, classified in class 428, subclass 372.
- II. Claims 2, 3, 4, 5, and 6, drawn to a sheath core fiber, classified in class 428, subclass 372.

If group I is elected, applicant is required under 35 U.S.C 121, to elect a single disclosed species between claims 8 and 9.

If group I is elected, applicant is required to elect a single disclosed species for claim 10 and 11.

- III. Claims 14-18, drawn to pillow, apparel, and bedding classified in class 2, subclass various.

The inventions are distinct, each from the other because:

Inventions I and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a yarn or a composite and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

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inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Inventions Group I and Group II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a yarn or a entangled yarn and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Chris Humphrey on 11/11/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1 and 7-

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13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-6 and 14 –18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

In accordance with the election of species requirement Chris Humphrey on 11/11/04 elected claim 9, PTFE homopolymer for claim 10.

Claims 8 and 11 are withdrawn from further consideration by the Examiner, 37 CFR 1.142 b, as being drawn to a non elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7, 9, 10, 12, 13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kloos (U.S. 6,451,914).

Kloos teaches a textile fiber material, which include fibers and fiberfill material comprising a mixture composition of a polymer component (such as PET) and 0.1 to 30% by weight PTFE (include homopolymer and copolymer of PTFE).

Klood also teaches the PTFE is substantially at the surface of the fibers. See claim 9, 10 and column 1 line 1-15 for example.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 7, 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Van Anholt (U.S. 5,165,993).

Van Anholt teaches a yarn having fibers use as a packing material (which includes a fiber fill which is a fiber used as a fill material). Van An holt further teaches the PTFE particles art incorporated in the yarn by very uniform distrubuting the PTFE particles over the fibers. Van An holt still further teaches the yarn contains less than 60% by weight PTFE particles in claim 3. See abstract and column 1, line 1-16 for example.

Claims 1, 7, 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kurihara U.S. 6,340,443).

Kurihara teaches a fiber made from a polyester and 1-70 % PTFE particles. See column 1 lines 1-19, column 1, line 5, and column 5, line26.

Kurihara teaches the polyester and the particles are mixed. See examples. This mixing or stirring would yield a fiber with PTFE particles on, in, and around the fiber surface.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder or Halm taken with Kurihara, Van holt, or Kloss.

Both Snyder and Halm teach a polyester fiberfill "slickened" on the surface of the fiber to reduce fiber to fiber friction. See column 1 line 50-55 of Snyder for example.

Both Snyder and Halm fail to teach low friction particles on the surface of the fiber.

Each of Kloss, van Anholt, Kurihara teach it is well known in the art of textile fiber material to incorporate less than 60% by weight of PTFE particles on the surface of the fiber in order to lubricate and/or reduce frictional behavior.

Therefore, it would have been obvious to one having ordinary skill in the art to incorporate the PTFT particle, as taught by Kloss, Van Anholt and Kurihara, in the polyester fiberfill, as taught by Snyder and Halm, order to lubricate the fiber and/or to reduce frictional behavior.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number 571-272-1521.

Edwards/af

March 14, 2005



**N. EDWARDS**  
**PRIMARY EXAMINER**